

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RICKIE SCOTT,

Petitioner,

ORDER

No. 1:14-cv-00863-MAT

-vs-

SUPT. WILLIAM A. LEE,

Respondent.

Rickie Scott ("Petitioner"), proceeding *pro se*, instituted this action pursuant to 28 U.S.C. § 2254 (Dkt #1). In a Decision and Order (Dkt #7) entered May 13, 2015, the Court (Curtin, J.) informed Petitioner that his claims of ineffective assistance of trial counsel and ineffective assistance of appellate counsel were unexhausted, and explained to Petitioner that he must elect among one of three procedural options. Petitioner thereafter filed a Motion to Stay (Dkt #8) on June 23, 2015.

On March 16, 2016, the Court (Geraci, J.) issued a Decision and Order (Dkt #11) ("the Stay Order") granting Petitioner's Motion to Stay. The Stay Order stayed and held in abeyance the instant proceeding with respect to Petitioner's exhausted claims and dismissed without prejudice his unexhausted claims, with leave to refile upon their exhaustion. The Stay Order indicated that the stay was conditioned on (1) Petitioner's initiation of efforts to exhaust his unexhausted claims within 30 days, and (2) his return

to District Court within 30 days of the completion of exhaustion proceedings in State Court. Petitioner was explicitly cautioned that if either condition of the stay was not met, the stay could be vacated *nunc pro tunc* as of the date it was entered, and the Petition could be dismissed if it was not timely.

Petitioner then sent a letter to Judge Geraci requesting an extension of time in which initiate efforts to exhaust his claims. Judge Geraci "so ordered" the letter on April 16, 2016 (Dkt #12) and extended Petitioner's time to commence exhaustion proceedings until May 4, 2016.

On April 27, 2016, Petitioner filed a "Notice of Motion by Petitioner to Amend" (Dkt #13, duplicated at Dkt #14). Petitioner indicated that he had "initiated efforts to exhaust his unexhausted claims within the 30 days by means of 440.10 motion to vacate conviction." (Dkt #13, p. 1 of 8).

Petitioner is ordered to provide an update in writing to the Court within fourteen (14) days of his receipt of this Order regarding the status of his motion to vacate in State Court.

SO ORDERED.

S/Michael A. Telesca

HONORABLE MICHAEL A. TELESKA
United States District Judge

Dated: September 6, 2017
Rochester, New York